

# **Indiana Department of State Revenue**

## **Revenue Ruling #2005-02ST**

January 19, 2005

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### **ISSUE**

Sales and Use Tax—Processing/Fabricating Charges on Structural Steel

**Authority:** Sales Tax Information Bulletin #60 (April 2004); 45 IAC 2.2-3-9(e); IC 6-2.5-4-9; IC 6-2.5-2-1; IC 6-2.5-4-1.

### **STATEMENT OF FACTS**

The taxpayer bids on subcontracts to provide, install, and erect structural steel for buildings under construction in Indiana. If the taxpayer is the successful bidder, it then will enter into a lump-sum contract with the general contractor on the building project to furnish material, labor, tools and equipment, and supervision to complete the structural steel portion of the building in accordance with the architect's drawings. The typical executed contract is an AIA (American Institute of Architects) contractor—subcontractor form, with language modified to name the specific job.

If the taxpayer is the successful bidder, it also will:

- (1) order the steel necessary from a steel service center to complete the job;
- (2) separately contract with a third party processor/fabricator to bend, shape, cut, or otherwise fabricate or process the steel to meet the building specifications—if necessary; and
- (3) subcontract the on-site steel installation and erection work to a third party that performs those services. The taxpayer actually does not perform installation or erection itself.

If the steel requires processing or fabrication, it is shipped directly from the steel service center or the steel producer (from whom the steel service center purchased the steel) to the processor/fabricator. The taxpayer takes title to the steel upon shipment to the processor/fabricator and holds title to the steel throughout the processing/fabricating process. After the steel is processed by the processor/fabricator, it is shipped directly to the jobsite—where the employees of the installer/erector install and erect the steel structure. Until it is installed/erected at the jobsite, the taxpayer holds title to the steel.

The taxpayer invoices the general contractor on a periodic basis as the steel is delivered to the jobsite and installed. The invoices break out the charges for steel delivered and its installation so that the general contractor can verify performance. However, the contracts are charged as lump-sum.

For the steel it purchases, the taxpayer receives an invoice from the steel service center that also specifies any delivery charge. The taxpayer provides the steel service center with a direct pay permit so that no sales tax is imposed on that invoice. When the steel is installed at the jobsite, the taxpayer remits use tax to the Department on the total amount invoiced by the steel service center, unless the taxpayer has received an exemption certificate from the contractor. Many of the building projects that taxpayer works on are for not-for-profit or tax exempt entities.

The taxpayer also receives an invoice from the installer/erector for installation and erection services only; sales tax is not included. The taxpayer does not remit use tax on the installation/erection charges.

The taxpayer also receives an invoice from the processor/fabricator for the processing and fabrication work done on the steel prior to its delivery to the jobsite. No sales tax is charged on an invoice from the processor/fabricator. At issue—the taxpayer is asking the Department to rule whether use tax is owed on charges for processing/fabrication.

### **DISCUSSION**

The taxpayer enters into contracts to provide the labor and materials for placement of structural steel into buildings. It does so pursuant to lump-sum contracts with general contractors. **Sales Tax Information Bulletin #60** (April 2004), states that although a contractor may subsequently furnish a breakdown of charges for labor and materials, he does so without changing the nature of the lump-sum contract.

45 IAC 2.2-3-9(e), interpreting IC 6-2.5-4-9 with respect to construction materials, states that a contractor is liable for the use tax and must remit the amount due (measured by the purchase price) when he converts the construction materials into realty on land he does not own, pursuant to a contract that includes all elements of cost in the total contract price—*i.e.*, a lump-sum contract. IC 6-2.5-2-1 imposes sales tax on retail transactions made in Indiana. IC 6-2.5-4-1 defines a retail transaction as the transfer of tangible personal property for consideration. However, the charges for processing/fabricating services are non-taxable because no tangible personal property is transferred during processing/fabricating.

### **RULING**

The Department rules that the charges for processing/fabricating are non-taxable.

### **CAVEAT**

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection

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